

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

John Gillepsie,)	CASE NO. 1:14 CV 2825
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Ohio State Penitentiary,)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge James R. Knepp, II (Doc. 15) which recommends denial of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner filed objections to the recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

Standard of Review

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.”

Discussion

Petitioner is incarcerated following his guilty plea to aggravated robbery with firearm specifications, felonious assault with a firearm specification, and receiving stolen property.

The Magistrate Judge found petitioner's first two grounds for relief to be procedurally defaulted given that petitioner failed to pursue them to the Ohio Supreme Court after they were denied by the Ohio court of appeals. Petitioner asserts that the Magistrate Judge abused his discretion in denying petitioner's earlier Motion to Stay which would have allowed petitioner to return to the state court to present these claims. However, the Court finds no error in the Magistrate Judge's October 2, 2015 Order denying the stay on the basis that the claims would be non-cognizable even if the procedural default were cured.

Although petitioner states that he objects to the Magistrate Judge's finding that the third ground for relief is not cognizable on habeas review, he presents no argument. Therefore, having found no clear error, the Court accepts the Magistrate Judge's conclusion as to this ground as well.

Conclusion

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge's Report and Recommendation, the Petition for Writ of Habeas Corpus is denied. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 7/11/16